

REMARKS

In response to the Office Action of March 12, 2010, reconsideration is respectfully requested in view of the remarks which follow.

The claims presently pending in the application are 21 – 37, inclusive.

Claims 21 – 35 and 27 – 37 stand rejected under 35 USC § 103(a) as being unpatentable over Skelbaek et al. (WO 91/17821). This rejection is respectfully traversed.

The claimed invention is drawn to a particulate material containing discrete particles of *fat having a melting point above 35 degrees centigrade* that is *dispersed* in a matrix.

It is respectfully submitted that the Examiner in fashioning his rejection, is resorting to “cherry picking” pieces of information from Skelbaeck in an attempt to reconstruct all of the integers of Applicants’ claims.

The Examiner now contends that Skelbaek teaches the use of hydrogenated castor oil and that this material has a melting point in excess of 60 degrees. However, the Examiner has taken the disclosure of hydrogenated castor oil completely out of context. In point of fact, the hydrogenated castor oil is an example of a “spraying agent” (page 5, line 12). A spraying agent is sprayed onto emulsion particles containing matrix material and flavorant (page 2, lines 25-33). Furthermore, the matrix material may contain a wax to provide extended flavour release (page 3, lines 31-35).

Thus, Skelbaek clearly teaches that it is a *wax that is dispersed in the matrix material*. The hydrogenated castor oil is *not dispersed* in the matrix material. It is the dispersed wax that influences the release rate, and it is the wax that is intended to perform the same function as the fat claimed by Applicants.

The claimed invention employs a fat and not a wax and the difference in performance is significant as evidenced by Applicants comparative Example 1, wherein Applicants compare their claimed invention with the formulation set out in Example 4 of

Skelbaek (mint oil/carnauba wax dispersed in a gelatine matrix that is sprayed with a casein spraying agent).

Contrary to the Examiner's assertion, it is quite clear that Applicants' invention does not consist of an arrangement of old elements with each performing the same function

It is respectfully submitted that claims 21-37 clearly distinguish over the teaching of Skelbaek since Skelbaek contains absolutely no teaching, suggestion or even a hint of employing a fat to provide extended flavor release as recited in the claimed invention. The Examiner having failed to establish a *prima facie* case of obviousness by a preponderance of the evidence, the rejection has been overcome and its withdrawal is solicited.

Claim 26 stands rejected under § 103(a) Skelbaek and further in view of Venema et al. (EP0839516A1). This rejection is respectfully traversed.

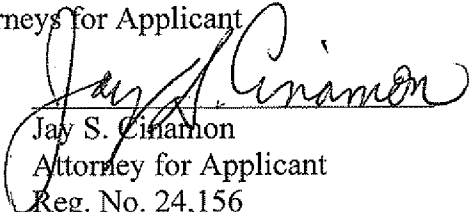
Since independent claim 21 distinguishes over Skelbaek, the secondary reference Venema cannot be said to render dependent claim 26 obvious since it includes all of the limitations of claim 21. Accordingly, since dependent claim 26 distinguishes over the teaching of the combination of references, the rejection under § 103(a) is deemed to have been overcome and its withdrawal is solicited.

The rejections of record under § 103(a) having been overcome, the issuance of a Notice of Allowance is solicited.

Please charge any fees which may be due and which have not been submitted herewith to our Deposit Account No. 01-0035.

Respectfully submitted,
ABELMAN, FRAYNE & SCHWAB
Attorneys for Applicant

By


Jay S. Cinamon
Attorney for Applicant
Reg. No. 24,156

666 Third Avenue
New York, NY 10017-5621